

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 53

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO THE CODE OF MILITARY JUSTICE; REPEALING CHAPTER 11, TITLE 46, IDAHO CODE, RELATING TO THE CODE OF MILITARY JUSTICE; AMENDING TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 11, TITLE 46, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO ENACT AND SPECIFY PARTICULAR PROVISIONS OF THE MODEL STATE CODE OF MILITARY JUSTICE, TO PROVIDE FOR ARREST, TO PROVIDE FOR REGULATORY AUTHORITY, TO PROVIDE FOR IMMUNITY AND TO PROVIDE FOR SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 11, Title 46, Idaho Code, and to read as follows:

CHAPTER 11

IDAHO CODE OF MILITARY JUSTICE

46-1101. SHORT TITLE. This act may be cited and referred to as the "Idaho Code of Military Justice."

46-1102. MODEL STATE CODE OF MILITARY JUSTICE. The "Model State Code of Military Justice" is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

MODEL STATE CODE OF MILITARY JUSTICE

PART I

GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS -- GENDER NEUTRALITY

(a) In this act, unless the context otherwise requires:

(1) The term "accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused;

(2) The term "cadet," "candidate," or "midshipman" means a person who is enrolled in or attending a state military academy, a regional training institute, or any other formal education program for the purpose of becoming a commissioned officer in the state military forces;

1 (3) The term "classified information" means:

2 (A) Any information or material that has been determined by an of-
3 ficial of the United States or any state pursuant to law, an exec-
4 utive order, or regulation to require protection against unautho-
5 rized disclosure for reasons of national or state security; and

6 (B) Any restricted data, as defined in section 11(y) of the atomic
7 energy act of 1954, 42 U.S.C. section 2014(y);

8 (4) The term "code" means this act;

9 (5) The term "commanding officer" includes only commissioned officers
10 of the state military forces and shall include officers in charge only
11 when administering nonjudicial punishment under article 15 of this
12 code. The term "commander" has the same meaning as "commanding officer"
13 unless the context otherwise requires;

14 (6) The term "convening authority" includes, in addition to the person
15 who convened the court, a commissioned officer commanding for the time
16 being or a successor in command to the convening authority;

17 (7) The term "day" means calendar day and is not synonymous with the
18 term "unit training assembly." Any punishment authorized by this arti-
19 cle which is measured in terms of days shall, when served in a status
20 other than annual field training, be construed to mean succeeding duty
21 days;

22 (8) The term "duty status other than state active duty" means any other
23 type of duty not in federal service and not full-time duty in the active
24 service of the state, under an order issued by authority of law and in-
25 cludes travel to and from such duty;

26 (9) The term "enlisted member" means a person in an enlisted grade;

27 (10) The term "judge advocate" means a commissioned officer of the orga-
28 nized state military forces who is a member in good standing of the bar
29 of the highest court of a state and is:

30 (A) Certified or designated as a judge advocate in the judge ad-
31 vocate general's corps of the army, air force, navy, or the marine
32 corps or designated as a law specialist as an officer of the coast
33 guard, or a reserve component of one (1) of these; or

34 (B) Certified as an nonfederally recognized judge advocate, under
35 regulations promulgated pursuant to this provision, by the senior
36 judge advocate of the commander of the force in the state military
37 forces of which the accused is a member, as competent to perform
38 such military justice duties required by this code. If there is no
39 such judge advocate available, then such certification may be made
40 by such senior judge advocate of the commander of another force in
41 the state military forces, as the convening authority directs;

42 (11) The term "may" is used in a permissive sense. The phrase "no person
43 may ..." means that no person is required, authorized or permitted to do
44 the act prescribed;

45 (12) The term "military court" means a court-martial or a court of in-
46 quiry;

47 (13) The term "military judge" means an official of a general or special
48 court-martial detailed in accordance with article 26 of this code;

49 (14) The term "military offenses" means those offenses prescribed under
50 articles 77 (Principals), 78 (Accessory after the fact), 80 (Attempts),

81 (Conspiracy), 82 (Solicitation), 83 (Fraudulent enlistment, appointment, or separation), 84 (Unlawful enlistment, appointment, or separation), 85 (Desertion), 86 (Absence without leave), 87 (Missing movement), 88 (Contempt toward officials), 89 (Disrespect towards superior commissioned officer), 90 (Assaulting or willfully disobeying superior commissioned officer), 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer), 92 (Failure to obey order or regulation), 93 (Cruelty and maltreatment), 94 (Mutiny or sedition), 95 (Resistance, flight, breach of arrest, and escape), 96 (Releasing prisoner without proper authority), 97 (Unlawful detention), 98 (Noncompliance with procedural rules), 99 (Misbehavior before the enemy), 100 (Subordinate compelling surrender), 101 (Improper use of countersign), 102 (Forcing a safeguard), 103 (Captured or abandoned property), 104 (Aiding the enemy), 105 (Misconduct as prisoner), 107 (False official statements), 108 (Military property -- Loss, damage, destruction, or wrongful disposition), 109 (Property other than military property -- Waste, spoilage, or destruction), 110 (Improper hazarding of vessel), 112 (Drunk on duty), 112a. (Wrongful use, possession, etc., of controlled substances), 113 (Misbehavior of sentinel), 114 (Dueling), 115 (Malingering), 116 (Riot or breach of peace), 117 (Provoking speeches or gestures), 132 (Frauds against the government), 133 (Conduct unbecoming an officer and a gentleman), and 134 (General article) of this code;

(15) The term "national security" means the national defense and foreign relations of the United States;

(16) The term "officer" means a commissioned or warrant officer;

(17) The term "officer in charge" means a member of the naval militia, the navy, the marine corps, or the coast guard designated as such by appropriate authority;

(18) The term "record," when used in connection with the proceedings of a court-martial, means:

(A) An official written transcript, written summary or other writing relating to the proceedings; or

(B) An official audiotape, videotape, digital image or file, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced;

(19) "Shall" is used in an imperative sense;

(20) "State" means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands;

(21) "State active duty" means full-time duty in the state military forces under an order of the governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from such duty;

(22) "Senior force judge advocate" means the senior judge advocate of the commander of the same force of the state military forces as the accused and who is that commander's chief legal advisor;

(23) "State military forces" means the national guard of the state of Idaho, as defined in title 32, United States Code, the organized naval militia of the state, and any other military force organized under the constitution and laws of the state of Idaho, not to include the unorga-

nized militia, when not in a status subjecting them to exclusive jurisdiction under 10 U.S.C. chapter 47. The unorganized militia, state defense force, state national guard, home guard or any other name of any state force that does not meet this definition shall not be part of the "state military forces" under this code;

(24) The term "superior commissioned officer" means a commissioned officer superior in rank or command;

(25) "Senior force commander" means the commander of the same force of the state military forces as the accused.

(b) The use of the masculine gender throughout this code shall also include the feminine gender.

ARTICLE 2. PERSONS SUBJECT TO THIS CODE -- JURISDICTION

(a) This code applies to all members of the state military forces when serving in a title 32 status or state active duty status as defined in article 1(a) (23) of this code. This code does not apply to members serving in a title 10 status or members of the unorganized militia as defined in section 46-102, Idaho Code.

(b) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force, regardless of duty status. Courts-martial have primary jurisdiction of military offenses as defined in article 1(a) (14) of this code. A proper civilian court has primary jurisdiction of a nonmilitary offense when an act or omission violates both this code and local criminal law, foreign or domestic. In such a case, a court-martial may be initiated only after the civilian authority has declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by the underlying offense.

ARTICLE 3. JURISDICTION TO TRY CERTAIN PERSONNEL

(a) Each person discharged from the state military forces who is later charged with having fraudulently obtained a discharge is, subject to article 43 of this code, subject to trial by court-martial on that charge and is, after apprehension, subject to this code while in custody under the direction of the state military forces for that trial. Upon conviction of that charge that person is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

ARTICLE 4. RESERVED

ARTICLE 5. TERRITORIAL APPLICABILITY OF THE CODE

(a) This code has applicability at all times and in all places subject to the personal jurisdiction as provided in article 2 of this code, or, if

1 not in a duty status, that there is a nexus between the act or omission con-
 2 stituting the offense and the efficient functioning of the state military
 3 forces; however, this grant of military jurisdiction shall neither preclude
 4 nor limit civilian jurisdiction over an offense, which is limited only by the
 5 prohibition of double jeopardy.

6 (b) Courts-martial and courts of inquiry may be convened and held in
 7 units of the state military forces while those units are serving outside the
 8 state with the same jurisdiction and powers as to persons subject to this
 9 code as if the proceedings were held inside the state, and offenses commit-
 10 ted outside the state may be tried and punished either inside or outside the
 11 state.

12 ARTICLE 6. JUDGE ADVOCATES

13 (a) The senior force judge advocates in each of the state's military
 14 forces or that judge advocate's delegates shall make frequent inspections in
 15 the field in supervision of the administration of military justice in that
 16 force.

17 (b) Convening authorities shall at all times communicate directly with
 18 their judge advocates in matters relating to the administration of military
 19 justice. The judge advocate of any command is entitled to communicate di-
 20 rectly with the judge advocate of a superior or subordinate command, or with
 21 the state judge advocate.

22 (c) No person who has acted as member, military judge, trial counsel,
 23 defense counsel, or investigating officer, or who has been a witness, in any
 24 case may later act as a judge advocate to any reviewing authority upon the
 25 same case.

26 ARTICLE 6a. RESERVED

27 PART II. APPREHENSION AND RESTRAINT

28 ARTICLE 7. APPREHENSION

29 (a) Apprehension is the taking of a person into custody.

30 (b) Any person authorized by this code or by 10 U.S.C. chapter 47, or by
 31 regulations issued under either, to apprehend persons subject to this code,
 32 any marshal of a court-martial appointed pursuant to the provisions of this
 33 code, and any peace officer or civil officer having authority to apprehend
 34 offenders under the laws of the United States or of a state, including, but
 35 not limited to, section 46-1103, Idaho Code, may do so upon probable cause
 36 that an offense has been committed and that the person apprehended committed
 37 it.

38 (c) Commissioned officers, warrant officers, petty officers, and non-
 39 commissioned officers have authority to quell quarrels, frays, and disor-
 40 ders among persons subject to this code and to apprehend persons subject to
 41 this code who take part therein.

42 (d) If an offender is apprehended outside the state, the offender's re-
 43 turn to the area must be in accordance with normal extradition procedures or
 44 by reciprocal agreement.

(e) No person authorized by this article to apprehend persons subject to this code or the place where such offender is confined, restrained, held, or otherwise housed may require payment of any fee or charge for so receiving, apprehending, confining, restraining, holding, or otherwise housing a person except as otherwise provided by law.

ARTICLE 8. RESERVED

ARTICLE 9. IMPOSITION OF RESTRAINT

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this code or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) This article does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

ARTICLE 10. RESTRAINT OF PERSONS CHARGED WITH OFFENSES

Any person subject to this code charged with an offense under this code may be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.

ARTICLE 11. PLACE OF CONFINEMENT -- REPORTS AND RECEIVING OF PRISONERS

(a) If a person subject to this code is confined before, during, or after trial, confinement shall be in a civilian or military confinement facility.

(b) No person authorized to receive prisoners pursuant to subsection (a) of this article may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a statement, signed by such officer,

1 of the offense charged against the prisoner, unless otherwise authorized by
2 law.

3 (c) Every person authorized to receive prisoners pursuant to subsec-
4 tion (a) of this article to whose charge a prisoner is committed shall,
5 within twenty-four (24) hours after that commitment or as soon as the person
6 is relieved from guard, report to the commanding officer of the prisoner the
7 name of the prisoner, the offense charged against the prisoner, and the name
8 of the person who ordered or authorized the commitment.

9 ARTICLE 12. CONFINEMENT WITH ENEMY PRISONERS PROHIBITED

10 No member of the state military forces may be placed in confinement in imme-
11 diate association with enemy prisoners or other foreign nationals not mem-
12 bers of the armed forces.

13 ARTICLE 13. PUNISHMENT PROHIBITED BEFORE TRIAL

14 No person, while being held for trial or awaiting a verdict, may be subjected
15 to punishment or penalty other than arrest or confinement upon the charges
16 pending against the person, nor shall the arrest or confinement imposed upon
17 such person be any more rigorous than the circumstances required to ensure
18 the person's presence.

19 ARTICLE 14. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES

20 (a) A person subject to this code accused of an offense against civil
21 authority may be delivered, upon request, to the civil authority for trial or
22 confinement.

23 (b) When delivery under this article is made to any civil authority of
24 a person undergoing sentence of a court-martial, the delivery, if followed
25 by conviction in a civil tribunal, interrupts the execution of the sentence
26 of the court-martial, and the offender after having answered to the civil au-
27 thorities for the offense shall, upon the request of competent military au-
28 thority, be returned to the place of original custody for the completion of
29 the person's sentence.

30 PART III. NONJUDICIAL PUNISHMENT

31 ARTICLE 15. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT

32 (a) Under such regulations as prescribed, any commanding officer (and
33 for purposes of this article, officers-in-charge) may impose disciplinary
34 punishments for minor offenses without the intervention of a court-martial
35 pursuant to this article. The governor, the adjutant general, or an officer
36 of a general or flag rank in command may delegate the powers under this arti-
37 cle to a principal assistant who is a member of the state military forces.

38 (b) Any commanding officer may impose upon enlisted members of the of-
39 ficer's command:

- 40 (1) An admonition;
- 41 (2) A reprimand;

(3) The withholding of privileges for not more than six (6) months;

(4) The forfeiture of pay of not more than seven (7) days' pay;

(5) A fine of not more than seven (7) days' pay;

(6) A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(7) Extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; and

(8) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

(c) Any commanding officer of the grade of major or lieutenant commander, or above may impose upon enlisted members of the officer's command:

(1) Any punishment authorized in subsection (b) (1), (2) and (3) of this article;

(2) The forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;

(3) A fine of not more than one (1) month's pay;

(4) A reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(5) Extra duties, including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive; and

(6) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days which need not be consecutive.

(d) The governor, the adjutant general, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command may impose:

(1) Upon officers of the officer's command:

(A) Any punishment authorized in subsection (c) (1), (2), (3) and (6) of this article; and

(B) Arrest in quarters for not more than thirty (30) days, which need not be consecutive.

(2) Upon enlisted members of the officer's command:

(A) Any punishment authorized in subsection (c) of this article.

(e) Whenever any of those punishments are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under this article.

(f) Except in the case of a member attached to or embarked in a vessel, punishment under this article may not be imposed on any member under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

(g) The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit any part or

1 amount of the punishment and restore all rights, privileges, and property
2 affected. The officer also may:

- 3 (1) Mitigate reduction in grade to forfeiture of pay;
- 4 (2) Mitigate arrest in quarters to restriction; or
- 5 (3) Mitigate extra duties to restriction.

6 The mitigated punishment shall not be for a greater period than the punish-
7 ment mitigated. When mitigating reduction in grade to forfeiture of pay, the
8 amount of the forfeiture shall not be greater than the amount that could have
9 been imposed initially under this article by the officer who imposed the pun-
10 ishment mitigated.

11 (h) A person punished under this article who considers the punishment
12 unjust or disproportionate to the offense may, through the proper channel,
13 appeal to the next superior authority within fifteen (15) days after the pun-
14 ishment is either announced or sent to the accused, as the commander may de-
15 termine. The appeal shall be promptly forwarded and decided, but the person
16 punished may in the meantime be required to undergo the punishment adjudged.
17 The superior authority may exercise the same powers with respect to the pun-
18 ishment imposed as may be exercised under subsection (g) of this article by
19 the officer who imposed the punishment. Before acting on an appeal from a
20 punishment, the authority that is to act on the appeal may refer the case to a
21 judge advocate for consideration and advice.

22 (i) The imposition and enforcement of disciplinary punishment under
23 this article for any act or omission is not a bar to trial by court-martial
24 or a civilian court of competent jurisdiction for a serious crime or offense
25 growing out of the same act or omission and not properly punishable under
26 this article; but the fact that a disciplinary punishment has been enforced
27 may be shown by the accused upon trial and, when so shown, it shall be consid-
28 ered in determining the measure of punishment to be adjudged in the event of
29 a finding of guilty.

30 (j) Whenever a punishment of forfeiture of pay is imposed under this ar-
31 ticle, the forfeiture may apply to pay accruing before, on, or after the date
32 that punishment is imposed.

33 (k) Regulations may prescribe the form of records to be kept of proceed-
34 ings under this article and may prescribe that certain categories of those
35 proceedings shall be in writing.

36 PART IV. COURT-MARTIAL JURISDICTION

37 ARTICLE 16. COURTS-MARTIAL CLASSIFIED

38 The three (3) kinds of courts-martial in the state military forces are:

- 39 (1) General courts-martial, consisting of:
 - 40 (A) A military judge and not less than five (5) members; or
 - 41 (B) Only a military judge, if before the court is assembled the accused,
42 knowing the identity of the military judge and after consultation with
43 defense counsel, requests orally on the record or in writing a court
44 composed only of a military judge and the military judge approves;
- 45 (2) Special courts-martial, consisting of:
 - 46 (A) A military judge and not less than three (3) members; or

1 (B) Only a military judge, if one (1) has been detailed to the court, and
 2 the accused under the same conditions as those prescribed in subsection
 3 (1) (B) of this article so requests; and
 4 (3) Summary courts-martial, consisting of one (1) commissioned offi-
 5 cer.

6 ARTICLE 17. JURISDICTION OF COURTS-MARTIAL IN GENERAL

7 Each component of the state military forces has court-martial jurisdiction
 8 over all members of the particular component who are subject to this code.
 9 Additionally, the army and air national guard state military forces have
 10 court-martial jurisdiction over all members subject to this code.

11 ARTICLE 18. JURISDICTION OF GENERAL COURTS-MARTIAL

12 Subject to article 17 of this code, general courts-martial have jurisdiction
 13 to try persons subject to this code for any offense made punishable by this
 14 code, and may, under such limitations as the governor may prescribe, adjudge
 15 any punishment not forbidden by this code.

16 ARTICLE 19. JURISDICTION OF SPECIAL COURTS-MARTIAL

17 Subject to article 17 of this code, special courts-martial have jurisdic-
 18 tion to try persons subject to this code for any offense made punishable by
 19 this code, and may, under such limitations as the governor may prescribe,
 20 adjudge any punishment not forbidden by this code except dishonorable dis-
 21 charge, dismissal, confinement for more than one (1) year, forfeiture of pay
 22 exceeding two-thirds (2/3) pay per month, or forfeiture of pay for more than
 23 one (1) year.

24 ARTICLE 20. JURISDICTION OF SUMMARY COURTS-MARTIAL

25 (a) Subject to article 17 of this code, summary courts-martial have
 26 jurisdiction to try persons subject to this code, except officers, cadets,
 27 candidates, and midshipmen, for any offense made punishable by this code
 28 under such limitations as the governor may prescribe.

29 (b) No person in the rank of E7 or above may be brought to trial before a
 30 summary court-martial if that person objects thereto. If objection to trial
 31 by summary court-martial is made by an accused in the rank of E7 or above,
 32 trial by special or general court-martial may be ordered, as may be appropri-
 33 ate. Members in the rank of E6 and below do not have the right to reject trial
 34 before a summary court-martial. Summary courts-martial may, under such lim-
 35 itations as the governor may prescribe, adjudge any punishment not forbidden
 36 by this code except dismissal, dishonorable or bad-conduct discharge, con-
 37 finement for more than one (1) month, restriction to specified limits for
 38 more than two (2) months, or forfeiture of more than two-thirds (2/3) of one
 39 (1) month's pay.

40 ARTICLE 21. RESERVED

1 PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

2 ARTICLE 22. WHO MAY CONVENE GENERAL COURTS-MARTIAL

3 (a) General courts-martial may be convened by:

4 (1) The governor;

5 (2) The adjutant general;

6 (3) The commanding officer of a force of the state military forces;

7 (4) The commanding officer of a division or a separate brigade; or

8 (5) The commanding officer of a separate wing.

9 (b) If any such commanding officer is an accuser, the court shall be
10 convened by superior competent authority and may in any case be convened by
11 such superior authority if considered desirable by such authority.

12 ARTICLE 23. WHO MAY CONVENE SPECIAL COURTS-MARTIAL

13 (a) Special courts-martial may be convened by:

14 (1) Any person who may convene a general court-martial;

15 (2) The commanding officer of a garrison, fort, post, camp, station,
16 air national guard base, or naval base or station;

17 (3) The commanding officer of a brigade, regiment, detached battalion,
18 or corresponding unit of the army;

19 (4) The commanding officer of a wing, group, separate squadron, or cor-
20 responding unit of the air force; or

21 (5) The commanding officer or officer in charge of any other command
22 when empowered by the adjutant general.

23 (b) If any such officer is an accuser, the court shall be convened by
24 superior competent authority and may in any case be convened by such superior
25 authority if considered desirable by such authority.

26 ARTICLE 24. WHO MAY CONVENE SUMMARY COURTS-MARTIAL

27 (a) Summary courts-martial may be convened by:

28 (1) Any person who may convene a general or special court-martial;

29 (2) The commanding officer of a detached company or other detachment,
30 or corresponding unit of the army;

31 (3) The commanding officer of a detached squadron or other detachment,
32 or corresponding unit of the air force; or

33 (4) The commanding officer or officer in charge of any other command
34 when empowered by the adjutant general.

35 (b) When only one (1) commissioned officer is present with a command
36 or detachment, that officer shall be the summary court-martial of that com-
37 mand or detachment and shall hear and determine all summary court-martial
38 cases. Summary courts-martial may, however, be convened in any case by supe-
39 rior competent authority if considered desirable by such authority.

40 ARTICLE 25. WHO MAY SERVE ON COURTS-MARTIAL

1 (a) Any commissioned officer of the state military forces is eligible
2 to serve on all courts-martial for the trial of any person subject to this
3 code.

4 (b) Any warrant officer of the state military forces is eligible to
5 serve on general and special courts-martial for the trial of any person sub-
6 ject to this code, other than a commissioned officer.

7 (c) Any enlisted member of the state military forces who is not a member
8 of the same unit as the accused is eligible to serve on general and special
9 courts-martial for the trial of any enlisted member subject to this code, but
10 that member shall serve as a member of a court only if, before the conclu-
11 sion of a session called by the military judge under article 39(a) of this
12 code prior to trial or, in the absence of such a session, before the court
13 is assembled for the trial of the accused, the accused personally has re-
14 quested orally on the record or in writing that enlisted members serve on
15 it. After such a request, the accused may not be tried by a general or spe-
16 cial court-martial the membership of which does not include enlisted members
17 in a number comprising at least one-third (1/3) of the total membership of
18 the court, unless eligible enlisted members cannot be obtained on account
19 of physical conditions or military exigencies. If such members cannot be
20 obtained, the court may be assembled and the trial held without them, but
21 the convening authority shall make a detailed written statement, to be ap-
22 pended to the record, stating why they could not be obtained. In this arti-
23 cle, "unit" means any regularly organized body of the state military forces
24 not larger than a company, a squadron, a division of the naval militia, or a
25 body corresponding to one (1) of them.

26 (d) When it can be avoided, no person subject to this code may be tried
27 by a court-martial any member of which is junior to the accused in rank or
28 grade.

29 (e) When convening a court-martial, the convening authority shall de-
30 tail as members thereof such members of the state military forces as, in the
31 convening authority's opinion, are best qualified for the duty by reason of
32 age, education, training, experience, length of service, and judicial tem-
33 perament. No member of the state military forces is eligible to serve as a
34 member of a general or special court-martial when that member is the accuser,
35 a witness, or has acted as investigating officer or as counsel in the same
36 case.

37 (f) Before a court-martial is assembled for the trial of a case, the
38 convening authority may excuse a member of the court from participating in
39 the case. The convening authority may delegate the authority under this sub-
40 section to a judge advocate or to any other principal assistant.

41 ARTICLE 25a. RESERVED

42 ARTICLE 26. MILITARY JUDGE OF A GENERAL OR SPECIAL COURT-MARTIAL

43 (a) A military judge shall be detailed to each general and special
44 court-martial. The military judge shall preside over each open session of
45 the court-martial to which the military judge has been detailed.

46 (b) A military judge shall be:

1 (1) An active or retired commissioned officer of an organized state
2 military force;

3 (2) A member in good standing of the bar of the highest court of a state
4 or a member of the bar of a federal court for at least five (5) years; and

5 (3) Certified as qualified for duty as a military judge by the senior
6 force judge advocate which is the same force as the accused.

7 (c) In the instance when a military judge is not a member of the bar of
8 the highest court of the state, the military judge shall be deemed admitted
9 pro hac vice, subject to filing a certificate with the senior force judge ad-
10 vocate which is the same force as the accused setting forth such qualifica-
11 tions provided in subsection (b) of this article.

12 (d) The military judge of a general or special court-martial shall be
13 designated by the senior force judge advocate which is the same force as the
14 accused, or a designee, for detail by the convening authority. Neither the
15 convening authority nor any staff member of the convening authority shall
16 prepare or review any report concerning the effectiveness, fitness, or ef-
17 ficiency of the military judge so detailed, which relates to performance of
18 duty as a military judge.

19 (e) No person is eligible to act as military judge in a case if that per-
20 son is the accuser or a witness, or has acted as investigating officer or a
21 counsel in the same case.

22 (f) The military judge of a court-martial may not consult with the mem-
23 bers of the court except in the presence of the accused, trial counsel, and
24 defense counsel, nor vote with the members of the court.

25 ARTICLE 27. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL

26 (a) General provision:

27 (1) For each general and special court-martial, the authority conven-
28 ing the court shall detail trial counsel, defense counsel, and such as-
29 sistants as are appropriate.

30 (2) No person who has acted as investigating officer, military judge,
31 witness or court member in any case may act later as trial counsel, as-
32 sistant trial counsel, or, unless expressly requested by the accused,
33 as defense counsel or assistant or associate defense counsel in the same
34 case. No person who has acted for the prosecution may act later in the
35 same case for the defense nor may any person who has acted for the de-
36 fense act later in the same case for the prosecution.

37 (b) Except as provided in subsection (c) of this article, trial counsel
38 or defense counsel detailed for a general or special court-martial must be:

39 (1) A judge advocate as defined in article 1(a)(10) of this code; and

40 (2) In the case of trial counsel, a member in good standing of the bar of
41 the highest court of the state where the court-martial is held.

42 (c) In the instance when a defense counsel is not a member of the bar of
43 the highest court of the state, the defense counsel shall be deemed admitted
44 pro hac vice, subject to filing a certificate with the military judge setting
45 forth the qualifications that counsel is:

46 (1) A commissioned officer of the armed forces of the United States or a
47 component thereof; and

- 1 (2) A member in good standing of the bar of the highest court of a state;
2 and
3 (3) Certified as a judge advocate in the judge advocate general's corps
4 of the army, air force, navy, or the marine corps; or
5 (4) A judge advocate as defined in article 1(a)(10) of this code.

6 ARTICLE 28. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS

7 Under such regulations as may be prescribed, the convening authority of a
8 general or special court-martial or court of inquiry shall detail or employ
9 qualified court reporters, who shall record the proceedings of and testimony
10 taken before that court and may detail or employ interpreters who shall in-
11 terpret for the court.

12 ARTICLE 29. ABSENT AND ADDITIONAL MEMBERS

13 (a) No member of a general or special court-martial may be absent or ex-
14 cused after the court has been assembled for the trial of the accused unless
15 excused as a result of a challenge, excused by the military judge for physi-
16 cal disability or other good cause, or excused by order of the convening au-
17 thority for good cause.

18 (b) Whenever a general court-martial, other than a general court-mar-
19 tial composed of a military judge only, is reduced below five (5) members,
20 the trial may not proceed unless the convening authority details new members
21 sufficient in number to provide not less than the applicable minimum number
22 of five (5) members. The trial may proceed with the new members present after
23 the recorded evidence previously introduced before the members of the court
24 has been read to the court in the presence of the military judge, the accused,
25 and counsel for both sides.

26 (c) Whenever a special court-martial, other than a special court-mar-
27 tial composed of a military judge only, is reduced below three (3) members,
28 the trial may not proceed unless the convening authority details new members
29 sufficient in number to provide not less than three (3) members. The trial
30 shall proceed with the new members present as if no evidence had been intro-
31 duced previously at the trial, unless a verbatim record of the evidence pre-
32 viously introduced before the members of the court or a stipulation thereof
33 is read to the court in the presence of the military judge, the accused, and
34 counsel for both sides.

35 (d) If the military judge of a court-martial composed of a military
36 judge only is unable to proceed with the trial because of physical disabili-
37 ty, as a result of a challenge, or for other good cause, the trial shall
38 proceed, subject to any applicable conditions of article 16(1)(B) or (2)(B)
39 of this code, after the detail of a new military judge as if no evidence had
40 previously been introduced, unless a verbatim record of the evidence previ-
41 ously introduced or a stipulation thereof is read in court in the presence of
42 the new military judge, the accused, and counsel for both sides.

43 PART VI. PRE-TRIAL PROCEDURE

ARTICLE 30. CHARGES AND SPECIFICATIONS

(a) Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer authorized by article 136(a) of this code to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of the signer's knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

ARTICLE 31. COMPULSORY SELF-INCRIMINATION PROHIBITED

(a) No person subject to this code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(c) No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

(d) No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

ARTICLE 32. INVESTIGATION

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition that should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in article 38 of this code and in regulations prescribed under that article. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the

1 investigation, they shall be accompanied by a statement of the substance of
 2 the testimony taken on both sides and a copy thereof shall be given to the ac-
 3 cused.

4 (c) If an investigation of the subject matter of an offense has been
 5 conducted before the accused is charged with the offense, and if the accused
 6 was present at the investigation and afforded the opportunities for repre-
 7 sentation, cross-examination, and presentation prescribed in subsection
 8 (b) of this article, no further investigation of that charge is necessary
 9 under this article unless it is demanded by the accused after the accused
 10 is informed of the charge. A demand for further investigation entitles the
 11 accused to recall witnesses for further cross-examination and to offer any
 12 new evidence in the accused's own behalf.

13 (d) If evidence adduced in an investigation under this article indi-
 14 cates that the accused committed an uncharged offense, the investigating of-
 15 ficer may investigate the subject matter of that offense without the accused
 16 having first been charged with the offense if the accused:

17 (1) Is present at the investigation;

18 (2) Is informed of the nature of each uncharged offense investigated;
 19 and

20 (3) Is afforded the opportunities for representation, cross-examina-
 21 tion, and presentation prescribed in subsection (b) of this article.

22 (e) The requirements of this article are binding on all persons admin-
 23 istering this code, but failure to follow them does not constitute jurisdic-
 24 tional error.

25 ARTICLE 33. FORWARDING OF CHARGES

26 When a person is held for trial by general court-martial, the commanding of-
 27 ficer shall within eight (8) days after the accused is ordered into arrest or
 28 confinement, if practicable, forward the charges, together with the inves-
 29 tigation and allied papers, to the person exercising general court-martial
 30 jurisdiction. If that is not practicable, the commanding officer shall re-
 31 port in writing to that person the reasons for delay.

32 ARTICLE 34. ADVICE OF JUDGE ADVOCATE AND REFERENCE FOR TRIAL

33 (a) Before directing the trial of any charge by general court-martial,
 34 the convening authority shall refer it to a judge advocate for consideration
 35 and advice. The convening authority may not refer a specification under a
 36 charge to a general court-martial for trial unless the convening authority
 37 has been advised in writing by a judge advocate that:

38 (1) The specification alleges an offense under this code;

39 (2) The specification is warranted by the evidence indicated in the re-
 40 port of investigation under article 32 of this code, if there is such a
 41 report; and

42 (3) A court-martial would have jurisdiction over the accused and the
 43 offense.

44 (b) The advice of the judge advocate under subsection (a) of this ar-
 45 ticle with respect to a specification under a charge shall include a written
 46 and signed statement by the judge advocate:

1 (1) Expressing conclusions with respect to each matter set forth in
2 subsection (a) of this article; and

3 (2) Recommending action that the convening authority take regarding
4 the specification. If the specification is referred for trial, the rec-
5 ommendation of the judge advocate shall accompany the specification.

6 (c) If the charges or specifications are not correct formally or do not
7 conform to the substance of the evidence contained in the report of the in-
8 vestigating officer, formal corrections, and such changes in the charges and
9 specifications as are needed to make them conform to the evidence, may be
10 made.

11 ARTICLE 35. SERVICE OF CHARGES

12 The trial counsel shall serve or caused to be served upon the accused a copy
13 of the charges. No person may, against the person's objection, be brought
14 to trial before a general court-martial case within a period of five (5) days
15 after the service of charges upon the accused, or in a special court-martial
16 within a period of three (3) days after the service of charges upon the ac-
17 cused.

18 PART VII. TRIAL PROCEDURE

19 ARTICLE 36. GOVERNOR OR THE ADJUTANT GENERAL MAY PRESCRIBE RULES

20 Pretrial, trial, and post-trial procedures, including modes of proof, for
21 courts-martial cases arising under this code, and for courts of inquiry, may
22 be prescribed by the governor or the adjutant general by regulations, or as
23 otherwise provided by law, which shall apply the principles of law and the
24 rules of evidence generally recognized in military criminal cases in the
25 courts of the armed forces but which may not be contrary to or inconsistent
26 with this code.

27 ARTICLE 37. UNLAWFULLY INFLUENCING ACTION OF COURT

28 (a) No authority convening a general, special, or summary court-mar-
29 tial, nor any other commanding officer, or officer serving on the staff
30 thereof, may censure, reprimand, or admonish the court or any member, the
31 military judge, or counsel thereof, with respect to the findings or sentence
32 adjudged by the court or with respect to any other exercise of its or their
33 functions in the conduct of the proceedings. No person subject to this code
34 may attempt to coerce or, by any unauthorized means, influence the action of
35 a court-martial or court of inquiry or any member thereof, in reaching the
36 findings or sentence in any case, or the action of any convening, approving,
37 or reviewing authority with respect to their judicial acts. The foregoing
38 provisions of this subsection shall not apply with respect to: (1) general
39 instructional or informational courses in military justice if such courses
40 are designed solely for the purpose of instructing members of a command in
41 the substantive and procedural aspects of courts-martial; or (2) to state-
42 ments and instructions given in open court by the military judge, summary
43 court-martial officer, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this code may, in preparing any such report: (1) consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or (2) give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

ARTICLE 38. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL

(a) The trial counsel of a general or special court-martial shall be a member in good standing of the state bar and shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of the proceedings.

(b) Defense counsel:

(1) The accused has the right to be represented in defense before a general or special court-martial or at an investigation under article 32 of this code as provided in this subsection.

(2) The accused may be represented by civilian counsel at the provision and expense of the accused.

(3) The accused may be represented:

(A) By military counsel detailed under article 27 of this code; or

(B) By military counsel of the accused's own selection if that counsel is reasonably available as determined under paragraph (7) of this subsection.

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) of this subsection shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6) of this subsection, if the accused is represented by military counsel of his own selection under paragraph (3) (B) of this subsection, any military counsel detailed under paragraph (3) (A) of this subsection shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under article 27 of this code to detail counsel, in that person's sole discretion:

(A) May detail additional military counsel as assistant defense counsel; and

(B) If the accused is represented by military counsel of the accused's own selection under paragraph (3) (B) of this subsection, may approve a request from the accused that military counsel detailed under paragraph (3) (A) of this subsection act as associate defense counsel.

(7) The senior force judge advocate of the same force of which the accused is a member shall determine whether the military counsel selected by an accused is reasonably available.

1 (c) In any court-martial proceeding resulting in a conviction, the de-
2 fense counsel:

3 (1) May forward for attachment to the record of proceedings a brief of
4 such matters as counsel determines should be considered in behalf of the
5 accused on review, including any objection to the contents of the record
6 which counsel considers appropriate;

7 (2) May assist the accused in the submission of any matter under article
8 60 of this code; and

9 (3) May take other action authorized by this code.

10 ARTICLE 39. SESSIONS

11 (a) At any time after the service of charges which have been referred
12 for trial to a court-martial composed of a military judge and members, the
13 military judge may, subject to article 35 of this code, call the court into
14 session without the presence of the members for the purpose of:

15 (1) Hearing and determining motions raising defenses or objections
16 which are capable of determination without trial of the issues raised by
17 a plea of not guilty;

18 (2) Hearing and ruling upon any matter which may be ruled upon by the
19 military judge under this code, whether or not the matter is appropriate
20 for later consideration or decision by the members of the court;

21 (3) Holding the arraignment and receiving the pleas of the accused; and

22 (4) Performing any other procedural function which does not require the
23 presence of the members of the court under this code. These proceedings
24 shall be conducted in the presence of the accused, the defense counsel,
25 and the trial counsel and shall be made a part of the record. These pro-
26 ceedings may be conducted notwithstanding the number of court members
27 and without regard to article 29.

28 (b) When the members of a court-martial deliberate or vote, only the
29 members may be present. All other proceedings, including any other consul-
30 tation of the members of the court with counsel or the military judge, shall
31 be made a part of the record and shall be in the presence of the accused, the
32 defense counsel, the trial counsel, and the military judge.

33 ARTICLE 40. CONTINUANCES

34 The military judge of a court-martial or a summary court-martial may, for
35 reasonable cause grant a continuance to any party for such time and as often
36 as may appear to be just.

37 ARTICLE 41. CHALLENGES

38 (a) Challenges generally.

39 (1) The military judge and members of a general or special court-mar-
40 tial may be challenged by the accused or the trial counsel for cause
41 stated to the court. The military judge or the court shall determine
42 the relevancy and validity of challenges for cause and may not receive a
43 challenge to more than one (1) person at a time. Challenges by the trial

1 counsel shall ordinarily be presented and decided before those by the
2 accused are offered.

3 (2) If exercise of a challenge for cause reduces the court below the
4 minimum number of members required by article 16 of this code, all par-
5 ties shall, notwithstanding article 29 of this code, either exercise or
6 waive any challenge for cause then apparent against the remaining mem-
7 bers of the court before additional members are detailed to the court.
8 However, peremptory challenges shall not be exercised at that time.

9 (b) Preemptory challenges.

10 (1) Each accused and the trial counsel are entitled initially to one (1)
11 preemptory challenge of members of the court. The military judge may
12 not be challenged except for cause.

13 (2) If exercise of a preemptory challenge reduces the court below the
14 minimum number of members required by article 16 of this code, the par-
15 ties shall, notwithstanding article 29 of this code, either exercise
16 or waive any remaining preemptory challenge, not previously waived,
17 against the remaining members of the court before additional members
18 are detailed to the court.

19 (3) Whenever additional members are detailed to the court, and after
20 any challenges for cause against such additional members are presented
21 and decided, each accused and the trial counsel are entitled to one (1)
22 preemptory challenge against members not previously subject to preemp-
23 tory challenge.

24 ARTICLE 42. OATHS OR AFFIRMATIONS

25 (a) Before performing their respective duties, military judges, gen-
26 eral and special courts-martial members, trial counsel, defense counsel,
27 reporters, and interpreters shall take an oath or affirmation in the pres-
28 ence of the accused to perform their duties faithfully. The form of the
29 oath or affirmation, the time and place of the taking thereof, the manner
30 of recording the same, and whether the oath or affirmation shall be taken
31 for all cases in which these duties are to be performed or for a particular
32 case, shall be as prescribed in regulation or as provided by law. These reg-
33 ulations may provide that an oath or affirmation to perform faithfully the
34 duties as a military judge, trial counsel, or defense counsel may be taken
35 at any time by any judge advocate or other person certified or designated to
36 be qualified or competent for the duty, and if such an oath or affirmation
37 is taken, it need not again be taken at the time the judge advocate or other
38 person is detailed to that duty.

39 (b) Each witness before a court-martial shall be examined under oath or
40 affirmation.

41 ARTICLE 43. STATUTE OF LIMITATIONS

42 (a) Except as otherwise provided in this article, a person charged with
43 any offense is not liable to be tried by court-martial or punished under ar-
44 ticle 15 of this code if the offense was committed more than three (3) years
45 before the receipt of sworn charges and specifications by an officer exer-

cising court-martial jurisdiction over the command or before the imposition of punishment under article 15 of this code.

(b) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this article.

(c) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(d) When the United States is at war, the running of any statute of limitations applicable to any offense under this code:

(1) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not;

(2) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States or any state; or

(3) Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency;

is suspended until two (2) years after the termination of hostilities as proclaimed by the president or by a joint resolution of congress.

(e) Exception.

(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(A) Has expired; or will be met.

(B) Will expire within one hundred eighty (180) days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) of this subsection are met.

(2) The conditions referred to in paragraph (1) of this subsection are that the new charges and specifications must:

(A) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty (180) days after the dismissal of the charges or specifications; and

(B) Allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

ARTICLE 44. FORMER JEOPARDY

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this arti-

1 cle until the finding of guilty has become final after review of the case has
2 been fully completed.

3 (c) A proceeding which, after the introduction of evidence but before a
4 finding, is dismissed or terminated by the convening authority or on motion
5 of the prosecution for failure of available evidence or witnesses without
6 any fault of the accused is a trial in the sense of this article.

7 ARTICLE 45. PLEAS OF THE ACCUSED

8 (a) If an accused after arraignment makes an irregular pleading, or
9 after a plea of guilty sets up matter inconsistent with the plea, or if it
10 appears that the accused has entered the plea of guilty improvidently or
11 through lack of understanding of its meaning and effect, or if the accused
12 fails or refuses to plead, a plea of not guilty shall be entered in the
13 record, and the court shall proceed as though the accused had pleaded not
14 guilty.

15 (b) With respect to any charge or specification to which a plea of
16 guilty has been made by the accused and accepted by the military judge or by a
17 court-martial without a military judge, a finding of guilty of the charge or
18 specification may be entered immediately without vote. This finding shall
19 constitute the finding of the court unless the plea of guilty is withdrawn
20 prior to announcement of the sentence, in which event the proceedings shall
21 continue as though the accused had pleaded not guilty.

22 ARTICLE 46. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE

23 The trial counsel, the defense counsel, and the court-martial shall have
24 equal opportunity to obtain witnesses and other evidence as prescribed by
25 regulations and provided by law. Process issued in court-martial cases to
26 compel witnesses to appear and testify and to compel the production of other
27 evidence shall apply the principles of law and the rules of courts-martial
28 generally recognized in military criminal cases in the courts of the armed
29 forces of the United States, but which may not be contrary to or inconsistent
30 with this code. Process shall run to any part of the United States, or the
31 territories, commonwealths, and possessions, and may be executed by civil
32 officers as prescribed by the laws of the place where the witness or evidence
33 is located or of the United States.

34 ARTICLE 47. REFUSAL TO APPEAR OR TESTIFY

35 (a) Any person not subject to this code who:

36 (1) Has been duly subpoenaed to appear as a witness or to produce books
37 and records before a court-martial or court of inquiry, or before any
38 military or civil officer designated to take a deposition to be read in
39 evidence before such a court;

40 (2) Has been duly paid or tendered the fees and mileage of a witness at
41 the rates allowed to witnesses attending a criminal court of the state;
42 and

1 (3) Willfully neglects or refuses to appear, or refuses to qualify as
 2 a witness or to testify or to produce any evidence which that person may
 3 have been legally subpoenaed to produce;
 4 may be punished by the military court in the same manner as a criminal court
 5 of the state.

6 (b) The fees and mileage of witnesses shall be advanced or paid out of
 7 the appropriations for the compensation of witnesses.

8 ARTICLE 48. CONTEMPTS

9 A military judge or summary court-martial officer may punish for contempt
 10 any person who uses any menacing word, sign, or gesture in its presence or who
 11 disturbs its proceedings by any riot or disorder.

12 (a) A person subject to this code may be punished for contempt by con-
 13 finement not to exceed thirty (30) days or a fine of one hundred dollars
 14 (\$100), or both.

15 (b) A person not subject to this code may be punished for contempt by a
 16 military court in the same manner as a criminal court of the state.

17 ARTICLE 49. DEPOSITIONS

18 (a) At any time after charges have been signed as provided in article
 19 30 of this code, any party may take oral or written depositions unless the
 20 military judge or summary court-martial officer hearing the case or, if the
 21 case is not being heard, an authority competent to convene a court-martial
 22 for the trial of those charges forbids it for good cause.

23 (b) The party at whose instance a deposition is to be taken shall give to
 24 every other party reasonable written notice of the time and place for taking
 25 the deposition.

26 (c) Depositions may be taken before and authenticated by any military
 27 or civil officer authorized by the laws of the state or by the laws of the
 28 place where the deposition is taken to administer oaths.

29 (d) A duly authenticated deposition taken upon reasonable notice to the
 30 other parties, so far as otherwise admissible under the rules of evidence,
 31 may be read in evidence or, in the case of audiotape, videotape, digital im-
 32 age or file, or similar material, may be played in evidence before any mili-
 33 tary court, if it appears:

34 (1) That the witness resides or is beyond the state in which the court is
 35 ordered to sit, or beyond one hundred (100) miles from the place of trial
 36 or hearing;

37 (2) That the witness by reason of death, age, sickness, bodily infir-
 38 mity, imprisonment, military necessity, non-amenability to process,
 39 or other reasonable cause is unable or refuses to appear and testify in
 40 person at the place of trial or hearing; or

41 (3) That the present whereabouts of the witness is unknown.

42 ARTICLE 50. ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY

43 (a) In any case not extending to the dismissal of a commissioned offi-
 44 cer, the sworn testimony, contained in the duly authenticated record of pro-

ceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry.

ARTICLE 50a. DEFENSE OF LACK OF MENTAL RESPONSIBILITY

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the court as to the defense of lack of mental responsibility under this article and charge them to find the accused:

(1) Guilty;

(2) Not guilty; or

(3) Not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) of this article does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused:

(1) Guilty;

(2) Not guilty; or

(3) Not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of article 52 of this code, the accused shall be found not guilty only by reason of lack of mental responsibility if:

(1) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of lack of mental responsibility has been established.

ARTICLE 51. VOTING AND RULINGS

(a) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member

1 of the court shall count the votes. The count shall be checked by the presi-
 2 dent, who shall forthwith announce the result of the ballot to the members of
 3 the court.

4 (b) The military judge shall rule upon all questions of law and all in-
 5 terlocutory questions arising during the proceedings. Any such ruling made
 6 by the military judge upon any question of law or any interlocutory question
 7 other than the factual issue of mental responsibility of the accused is fi-
 8 nal and constitutes the ruling of the court. However, the military judge may
 9 change the ruling at any time during the trial. Unless the ruling is final,
 10 if any member objects thereto, the court shall be cleared and closed and the
 11 question decided by a voice vote as provided in article 52 of this code, be-
 12 ginning with the junior in rank.

13 (c) Before a vote is taken on the findings, the military judge shall, in
 14 the presence of the accused and counsel, instruct the members of the court as
 15 to the elements of the offense and charge them:

16 (1) That the accused must be presumed to be innocent until his guilt is
 17 established by legal and competent evidence beyond reasonable doubt;

18 (2) That in the case being considered, if there is a reasonable doubt as
 19 to the guilt of the accused, the doubt must be resolved in favor of the
 20 accused and the accused must be acquitted;

21 (3) That, if there is a reasonable doubt as to the degree of guilt, the
 22 finding must be in a lower degree as to which there is no reasonable
 23 doubt; and

24 (4) That the burden of proof to establish the guilt of the accused be-
 25 yond reasonable doubt is upon the state.

26 (d) Subsections (a), (b), and (c) of this article do not apply to a
 27 court-martial composed of a military judge only. The military judge of such
 28 a court-martial shall determine all questions of law and fact arising during
 29 the proceedings and, if the accused is convicted, adjudge an appropriate
 30 sentence. The military judge of such a court-martial shall make a general
 31 finding and shall in addition, on request, find the facts specially. If an
 32 opinion or memorandum of decision is filed, it will be sufficient if the
 33 findings of fact appear therein.

34 ARTICLE 52. NUMBER OF VOTES REQUIRED

35 (a) No person may be convicted of an offense except as provided in arti-
 36 cle 45(b) of this code or by the concurrence of two-thirds (2/3) of the mem-
 37 bers present at the time the vote is taken.

38 (b) All other questions to be decided by the members of a general or spe-
 39 cial court-martial shall be determined by a majority vote, but a determi-
 40 nation to reconsider a finding of guilty or to reconsider a sentence, with
 41 a view toward decreasing it, may be made by any lesser vote which indicates
 42 that the reconsideration is not opposed by the number of votes required for
 43 that finding or sentence. A tie vote on a challenge disqualifies the member
 44 challenged. A tie vote on a motion relating to the question of the accused's
 45 sanity is a determination against the accused. A tie vote on any other ques-
 46 tion is a determination in favor of the accused.

1 ARTICLE 53. COURT TO ANNOUNCE ACTION

2 A court-martial shall announce its findings and sentence to the parties as
3 soon as determined.

4 ARTICLE 54. RECORD OF TRIAL

5 (a) Each general and special court-martial shall keep a separate record
6 of the proceedings in each case brought before it, and the record shall be
7 authenticated by the signature of the military judge. If the record cannot
8 be authenticated by the military judge by reason of his death, disability,
9 or absence, it shall be authenticated by the signature of the trial counsel
10 or by that of a member, if the trial counsel is unable to authenticate it by
11 reason of his death, disability, or absence. In a court-martial consisting
12 of only a military judge, the record shall be authenticated by the court re-
13 porter under the same conditions which would impose such a duty on a member
14 under this subsection.

15 (b) (1) A complete verbatim record of the proceedings and testimony
16 shall be prepared in each general and special court-martial case re-
17 sulting in a conviction; and

18 (2) In all other court-martial cases, the record shall contain such
19 matters as may be prescribed by regulations.

20 (c) Each summary court-martial shall keep a separate record of the pro-
21 ceedings in each case, and the record shall be authenticated in the manner as
22 may be prescribed by regulations.

23 (d) A copy of the record of the proceedings of each general and special
24 court-martial shall be given to the accused as soon as it is authenticated.

25 PART VIII. SENTENCES

26 ARTICLE 55. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED

27 Punishment by flogging, or by branding, marking, or tattooing on the body, or
28 any other cruel or unusual punishment may not be adjudged by a court-martial
29 or inflicted upon any person subject to this code. The use of irons, single
30 or double, except for the purpose of safe custody, is prohibited.

31 ARTICLE 56. MAXIMUM LIMITS

32 (a) The punishment which a court-martial may direct for an offense may
33 not exceed such limits as prescribed by this code, but in no instance may a
34 sentence exceed more than ten (10) years for a military offense, nor shall a
35 sentence of death be adjudged. A conviction by general court-martial of any
36 military offense for which an accused may receive a sentence of confinement
37 for more than one (1) year is a felony offense. Except for convictions by a
38 summary court-martial, all other military offenses are misdemeanors. Any
39 conviction by a summary court-martial is not a criminal conviction.

40 (b) The limits of punishment for violations of the punitive articles
41 prescribed herein shall be lesser of the sentences prescribed by the manual

1 for courts-martial of the United States in effect on January 1, 2004, and the
 2 state manual for courts-martial, but in no instance shall any punishment ex-
 3 ceed that authorized by this code.

4 ARTICLE 56a. RESERVED

5 ARTICLE 57. EFFECTIVE DATE OF SENTENCES

6 (a) Whenever a sentence of a court-martial as lawfully adjudged and ap-
 7 proved includes a forfeiture of pay or allowances in addition to confinement
 8 not suspended, the forfeiture may apply to pay or allowances becoming due on
 9 or after the date the sentence is approved by the convening authority. No
 10 forfeiture may extend to any pay or allowances accrued before that date.

11 (b) Any period of confinement included in a sentence of a court-mar-
 12 tial begins to run from the date the sentence is adjudged by the court-mar-
 13 tial, but periods during which the sentence to confinement is suspended or
 14 deferred shall be excluded in computing the service of the term of confine-
 15 ment.

16 (c) All other sentences of courts-martial are effective on the date or-
 17 dered executed.

18 ARTICLE 57a. DEFERMENT OF SENTENCES

19 (a) On application by an accused who is under sentence to confinement
 20 that has not been ordered executed, the convening authority or, if the ac-
 21 cused is no longer under that person's jurisdiction, the person exercising
 22 general court-martial jurisdiction over the command to which the accused is
 23 currently assigned, may in that person's sole discretion defer service of
 24 the sentence to confinement. The deferment shall terminate when the sen-
 25 tence is ordered executed. The deferment may be rescinded at any time by
 26 the person who granted it or, if the accused is no longer under that person's
 27 jurisdiction, by the person exercising general court-martial jurisdiction
 28 over the command to which the accused is currently assigned.

29 (b) (1) In any case in which a court-martial sentences an accused re-
 30 ferred to in paragraph (2) of this subsection to confinement, the
 31 convening authority may defer the service of the sentence to confine-
 32 ment, without the consent of the accused, until after the accused has
 33 been permanently released to the state military forces by a state, the
 34 United States, or a foreign country referred to in that paragraph.

35 (2) Paragraph (1) of this subsection applies to a person subject to this
 36 code who:

37 (A) While in the custody of a state, the United States, or a for-
 38 eign country is temporarily returned by that state, the United
 39 States, or a foreign country to the state military forces for trial
 40 by court-martial; and

41 (B) After the court-martial, is returned to that state, the United
 42 States, or a foreign country under the authority of a mutual agree-
 43 ment or treaty, as the case may be.

(3) In this subsection, the term "state" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(c) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under article 67(a) of this code is pending, the adjutant general may defer further service of the sentence to confinement while that review is pending.

ARTICLE 58. EXECUTION OF CONFINEMENT

(a) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

(b) The omission of "hard labor" as a sentence authorized under this code does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

(c) No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.

ARTICLE 58a. SENTENCES -- REDUCTION IN ENLISTED GRADE UPON APPROVAL

(a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

- (1) A dishonorable or bad-conduct discharge; or
- (2) Confinement;

reduces that member to pay grade E-1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) of this article is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a) (1) or (2) of this article, the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

ARTICLE 58b. SENTENCES -- FORFEITURE OF PAY AND ALLOWANCES DURING CONFINEMENT

(a) Generally.

(1) A court-martial sentence described in paragraph (2) of this subsection shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this article shall take effect on the date determined under article 57(a) of this code and may be deferred as provided by that article. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds (2/3) of all pay due that member during such period.

(2) A sentence covered by this article is any sentence that includes:

1 (A) Confinement for more than six (6) months; or

2 (B) Confinement for six (6) months or less and a dishonorable or
3 bad-conduct discharge or dismissal.

4 (b) In a case involving an accused who has dependents, the convening au-
5 thority or other person acting under article 60 of this code may waive any
6 or all of the forfeitures of pay and allowances required by subsection (a)
7 of this article for a period not to exceed six (6) months. Any amount of pay
8 or allowances that, except for a waiver under this subsection, would be for-
9 feited shall be paid, as the convening authority or other person taking ac-
10 tion directs, to the dependents of the accused.

11 (c) If the sentence of a member who forfeits pay and allowances under
12 subsection (a) of this article is set aside or disapproved or, as finally ap-
13 proved, does not provide for a punishment referred to in subsection (a) (2) of
14 this article, the member shall be paid the pay and allowances which the mem-
15 ber would have been paid, except for the forfeiture, for the period during
16 which the forfeiture was in effect.

17 PART IX. POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

18 ARTICLE 59. ERROR OF LAW -- LESSER INCLUDED OFFENSE

19 (a) A finding or sentence of a court-martial may not be held incorrect
20 on the ground of an error of law unless the error materially prejudices the
21 substantial rights of the accused.

22 (b) Any reviewing authority with the power to approve or affirm a find-
23 ing of guilty may approve or affirm, instead, so much of the finding as in-
24 cludes a lesser included offense.

25 ARTICLE 60. ACTION BY THE CONVENING AUTHORITY

26 (a) The findings and sentence of a court-martial shall be reported
27 promptly to the convening authority after the announcement of the sentence.

28 (b) Matters in extenuation.

29 (1) The accused may submit to the convening authority matters for con-
30 sideration by the convening authority with respect to the findings and
31 the sentence. Any such submission shall be in writing. Except in a sum-
32 mary court-martial case, such a submission shall be made within ten (10)
33 days after the accused has been given an authenticated record of trial
34 and, if applicable, the recommendation of a judge advocate under sub-
35 section (d) of this article. In a summary court-martial case, such a
36 submission shall be made within seven (7) days after the sentence is an-
37 nounced.

38 (2) If the accused shows that additional time is required for the ac-
39 cused to submit such matters, the convening authority or other person
40 taking action under this article, for good cause, may extend the appli-
41 cable period under paragraph (1) of this subsection for not more than an
42 additional twenty (20) days.

43 (3) In a summary court-martial case, the accused shall be promptly pro-
44 vided a copy of the record of trial for use in preparing a submission au-
45 thorized by paragraph (1) of this subsection.

1 (4) The accused may waive the right to make a submission to the con-
2 convening authority under paragraph (1) of this subsection. Such a waiver
3 must be made in writing and may not be revoked. For the purposes of sub-
4 section (c)(2) of this article, the time within which the accused may
5 make a submission under this subsection shall be deemed to have expired
6 upon the submission of such a waiver to the convening authority.

7 (c) Discretion of convening authority.

8 (1) The authority under this article to modify the findings and sen-
9 tence of a court-martial is a matter of command prerogative involving
10 the sole discretion of the convening authority. If it is impractical
11 for the convening authority to act, the convening authority shall for-
12 ward the case to a person exercising general court-martial jurisdiction
13 who may take action under this article.

14 (2) Action on the sentence of a court-martial shall be taken by the
15 convening authority or by another person authorized to act under this
16 article. Such action may be taken only after consideration of any mat-
17 ters submitted by the accused under subsection (b) of this article or
18 after the time for submitting such matters expires, whichever is ear-
19 lier. The convening authority or other person taking such action, in
20 that person's sole discretion, may approve, disapprove, commute, or
21 suspend the sentence in whole or in part.

22 (3) Action on the findings of a court-martial by the convening author-
23 ity or other person acting on the sentence is not required. However,
24 such person, in the person's sole discretion, may:

25 (A) Dismiss any charge or specification by setting aside a finding
26 of guilty thereto; or

27 (B) Change a finding of guilty to a charge or specification to a
28 finding of guilty to an offense that is a lesser included offense
29 of the offense stated in the charge or specification.

30 (d) Before acting under this article on any general or special court-
31 martial case in which there is a finding of guilt, the convening authority
32 or other person taking action under this article shall obtain and consider
33 the written recommendation of a judge advocate. The convening authority or
34 other person taking action under this article shall refer the record of trial
35 to the judge advocate, and the judge advocate shall use such record in the
36 preparation of the recommendation. The recommendation of the judge advocate
37 shall include such matters as may be prescribed by regulation and shall be
38 served on the accused, who may submit any matter in response under subsection
39 (b) of this article. Failure to object in the response to the recommendation
40 or to any matter attached to the recommendation waives the right to object
41 thereto.

42 (e) Proceedings in revision.

43 (1) The convening authority or other person taking action under this
44 article, in the person's sole discretion, may order a proceeding in re-
45 vision or a rehearing.

46 (2) A proceeding in revision may be ordered if there is an apparent er-
47 ror or omission in the record or if the record shows improper or incon-
48 sistent action by a court-martial with respect to the findings or sen-
49 tence that can be rectified without material prejudice to the substan-

1 tial rights of the accused. In no case, however, may a proceeding in re-
2 vision:

3 (A) Reconsider a finding of not guilty of any specification or a
4 ruling which amounts to a finding of not guilty;

5 (B) Reconsider a finding of not guilty of any charge, unless there
6 has been a finding of guilty under a specification laid under that
7 charge, which sufficiently alleges a violation of some article of
8 this code; or

9 (C) Increase the severity of the sentence unless the sentence pre-
10 scribed for the offense is mandatory.

11 (3) A rehearing may be ordered by the convening authority or other
12 person taking action under this article if that person disapproves the
13 findings and sentence and states the reasons for disapproval of the
14 findings. If such person disapproves the findings and sentence and
15 does not order a rehearing, that person shall dismiss the charges. A
16 rehearing as to the findings may not be ordered where there is a lack of
17 sufficient evidence in the record to support the findings. A rehearing
18 as to the sentence may be ordered if the convening authority or other
19 person taking action under this subsection disapproves the sentence.

20 ARTICLE 61. WITHDRAWAL OF APPEAL

21 (a) In each case subject to appellate review under this code, the
22 accused may file with the convening authority a statement expressly with-
23 drawing the right of the accused to such appeal. Such a withdrawal shall be
24 signed by both the accused and his defense counsel and must be filed in accor-
25 dance with appellate procedures as provided by law.

26 (b) The accused may withdraw an appeal at any time in accordance with
27 appellate procedures as provided by law.

28 ARTICLE 62. APPEAL BY THE STATE

29 (a) Generally.

30 (1) In a trial by court-martial in which a punitive discharge may be ad-
31 judged, the state may appeal the following, other than a finding of not
32 guilty with respect to the charge or specification by the members of the
33 court-martial, or by a judge in a bench trial so long as it is not made in
34 reconsideration:

35 (A) An order or ruling of the military judge which terminates the
36 proceedings with respect to a charge or specification.

37 (B) An order or ruling which excludes evidence that is substantial
38 proof of a fact material in the proceeding.

39 (C) An order or ruling which directs the disclosure of classified
40 information.

41 (D) An order or ruling which imposes sanctions for nondisclosure
42 of classified information.

43 (E) A refusal of the military judge to issue a protective order
44 sought by the state to prevent the disclosure of classified infor-
45 mation.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) of this paragraph that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within seventy-two (72) hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and, if the order or ruling appealed is one which excludes evidence, that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this article shall be diligently prosecuted as provided by law.

(b) An appeal under this article shall be forwarded to the court prescribed in article 67a of this code. In ruling on an appeal under this article, that court may act only with respect to matters of law.

(c) Any period of delay resulting from an appeal under this article shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

ARTICLE 63. REHEARINGS

Each rehearing under this code shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

ARTICLE 64. REVIEW BY THE SENIOR FORCE JUDGE ADVOCATE

(a) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether:

(A) The court had jurisdiction over the accused and the offense;

(B) The charge and specification stated an offense; and

(C) The sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b) of this article, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) of this article shall be sent for action to the adjutant general if:

(1) The judge advocate who reviewed the case recommends corrective action;

(2) The sentence approved under article 60(c) of this code extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six (6) months; or

(3) Such action is otherwise required by regulations of the adjutant general.

(c) The adjutant general's discretion.

(1) The adjutant general may:

(A) Disapprove or approve the findings or sentence, in whole or in part;

(B) Remit, commute, or suspend the sentence in whole or in part;

(C) Except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) Dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) If the opinion of the senior force judge advocate, or designee, in the senior force judge advocate's review under subsection (a) of this article is that corrective action is required as a matter of law and if the adjutant general does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the governor for review and action as deemed appropriate.

(d) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The senior force judge advocate's review shall be limited to questions of subject matter jurisdiction.

(e) The record of trial and related documents in each case reviewed under subsection (d) of this article shall be sent for action to the adjutant general.

(1) The adjutant general may:

(A) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the government, as the adjutant general deems appropriate; or

(B) Return the record of trial and related documents to the senior force judge advocate for appeal by the government as provided by law.

ARTICLE 65.

DISPOSITION OF RECORDS AFTER REVIEW BY THE CONVENING AUTHORITY

Except as otherwise required by this code, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulation and provided by law.

ARTICLE 66. RESERVED

ARTICLE 67. RESERVED

ARTICLE 67a. REVIEW BY STATE APPELLATE AUTHORITY

Decisions of a court-martial are from a court with jurisdiction to issue felony convictions and appeals therefrom will be made to the Idaho supreme court. The appellate procedures to be followed shall be those provided by law and rule for the appeal of criminal cases thereto.

ARTICLE 68. RESERVED

ARTICLE 69. RESERVED

ARTICLE 70. APPELLATE COUNSEL

(a) The senior force judge advocate shall detail a judge advocate as appellate government counsel to represent the state in the review or appeal of cases specified in article 67a of this code and before any federal court when requested to do so by the state attorney general. Appellate government counsel must be a member in good standing of the bar of the highest court of the state to which the appeal is taken.

(b) Upon an appeal by the state, an accused has the right to be represented by detailed military counsel before any reviewing authority and before any appellate court.

(c) Upon the appeal by an accused, the accused has the right to be represented by military counsel before any reviewing authority.

(d) Upon the request of an accused entitled to be so represented, the senior force judge advocate shall appoint a judge advocate to represent the accused in the review or appeal of cases specified in subsections (b) and (c) of this article.

(e) An accused may be represented by civilian appellate counsel at no expense to the state.

1 ARTICLE 71. EXECUTION OF SENTENCE -- SUSPENSION OF SENTENCE

2 (a) If the sentence of the court-martial extends to dismissal or a dis-
3 honorable or bad-conduct discharge and if the right of the accused to appel-
4 late review is not waived, and an appeal is not withdrawn under article 61 of
5 this code, that part of the sentence extending to dismissal or a dishonorable
6 or bad-conduct discharge may not be executed until there is a final judgment
7 as to the legality of the proceedings. A judgment as to the legality of the
8 proceedings is final in such cases when review is completed by an appellate
9 court prescribed in article 67a. of this code and is deemed final by the law
10 of state where the judgment was had.

11 (b) If the sentence of the court-martial extends to dismissal or a dis-
12 honorable or bad conduct discharge and if the right of the accused to appel-
13 late review is waived, or an appeal is withdrawn under article 61 of this
14 code, that part of the sentence extending to dismissal or a dishonorable or
15 bad-conduct discharge may not be executed until review of the case by the se-
16 nior force judge advocate and any action on that review under article 64 of
17 this code is completed. Any other part of a court-martial sentence may be or-
18 dered executed by the convening authority or other person acting on the case
19 under article 60 of this code when so approved under that article.

20 ARTICLE 72. VACATION OF SUSPENSION

21 (a) Before the vacation of the suspension of a special court-martial
22 sentence, which as approved includes a bad-conduct discharge, or of any gen-
23 eral court-martial sentence, the officer having special court-martial ju-
24 risdiction over the probationer shall hold a hearing on an alleged violation
25 of probation. The probationer shall be represented at the hearing by mili-
26 tary counsel if the probationer so desires.

27 (b) The record of the hearing and the recommendation of the officer hav-
28 ing special court-martial jurisdiction shall be sent for action to the offi-
29 cer exercising general court-martial jurisdiction over the probationer. If
30 the officer vacates the suspension, any unexecuted part of the sentence, ex-
31 cept a dismissal, shall be executed, subject to applicable restrictions in
32 this code.

33 (c) The suspension of any other sentence may be vacated by any authority
34 competent to convene, for the command in which the accused is serving or as-
35 signed, a court of the kind that imposed the sentence.

36 ARTICLE 73. PETITION FOR A NEW TRIAL

37 At any time within two (2) years after approval by the convening authority
38 of a court-martial sentence, the accused may petition the adjutant general
39 for a new trial on the grounds of newly discovered evidence or fraud on the
40 court-martial.

41 ARTICLE 74. REMISSION AND SUSPENSION

42 (a) Any authority competent to convene, for the command in which the ac-
43 cused is serving or assigned, a court of the kind that imposed the sentence

1 may remit or suspend any part or amount of the unexecuted part of any sen-
 2 tence, including all uncollected forfeitures other than a sentence approved
 3 by the governor.

4 (b) The governor may, for good cause, substitute an administrative form
 5 of discharge for a discharge or dismissal executed in accordance with the
 6 sentence of a court-martial.

7 ARTICLE 75. RESTORATION

8 (a) Under such regulations as may be prescribed, all rights, privi-
 9 leges, and property affected by an executed part of a court-martial sentence
 10 which has been set aside or disapproved, except an executed dismissal or
 11 discharge, shall be restored unless a new trial or rehearing is ordered and
 12 such executed part is included in a sentence imposed upon the new trial or
 13 rehearing.

14 (b) If a previously executed sentence of dishonorable or bad-conduct
 15 discharge is not imposed on a new trial, the governor may substitute there-
 16 fore a form of discharge authorized for administrative issuance unless the
 17 accused is to serve out the remainder of the accused's enlistment.

18 (c) If a previously executed sentence of dismissal is not imposed on a
 19 new trial, the governor may substitute therefore a form of discharge autho-
 20 rized for administrative issue, and the commissioned officer dismissed by
 21 that sentence may be reappointed by the governor alone to such commissioned
 22 grade and with such rank as in the opinion of the governor that former offi-
 23 cer would have attained had he not been dismissed. The reappointment of such
 24 a former officer shall be without regard to the existence of a vacancy and
 25 shall affect the promotion status of other officers only insofar as the gov-
 26 ernor may direct. All time between the dismissal and the reappointment shall
 27 be considered as actual service for all purposes, including the right to pay
 28 and allowances.

29 ARTICLE 76. FINALITY OF PROCEEDINGS, FINDINGS, AND SENTENCES

30 The appellate review of records of trial provided by this code, the proceed-
 31 ings, findings, and sentences of courts-martial as approved, reviewed, or
 32 affirmed as required by this code, and all dismissals and discharges car-
 33 ried into execution under sentences by courts-martial following approval,
 34 review, or affirmation as required by this code are final and conclusive.
 35 Orders publishing the proceedings of courts-martial and all action taken
 36 pursuant to those proceedings are binding upon all departments, courts,
 37 agencies, and officers of the United States and the several states, subject
 38 only to action upon a petition for a new trial as provided in article 73 of
 39 this code and to action under article 74 of this code.

40 ARTICLE 76a. LEAVE REQUIRED TO BE TAKEN PEND- 41 ING REVIEW OF CERTAIN COURT-MARTIAL CONVICTIONS

42 Under regulations prescribed, an accused who has been sentenced by a court-
 43 martial may be required to take leave pending completion of action under this
 44 article if the sentence, as approved under article 60 of this code, includes

1 an unsuspended dismissal or an unsuspended dishonorable or bad-conduct dis-
 2 charge. The accused may be required to begin such leave on the date on which
 3 the sentence is approved under article 60 of this code or at any time after
 4 such date, and such leave may be continued until the date on which action un-
 5 der this article is completed or may be terminated at any earlier time.

6 ARTICLE 76b. RESERVED

7 PART X. PUNITIVE ARTICLES

8 ARTICLE 77. PRINCIPALS

9 Any person subject to this code who:

- 10 (1) Commits an offense punishable by this code, or aids, abets, coun-
 11 sels, commands, or procures its commission; or
 12 (2) Causes an act to be done which if directly performed by him would be
 13 punishable by this code;
 14 is a principal.

15 ARTICLE 78. ACCESSORY AFTER THE FACT

16 Any person subject to this code who, knowing that an offense punishable by
 17 this code has been committed, receives, comforts, or assists the offender in
 18 order to hinder or prevent his apprehension, trial, or punishment shall be
 19 punished as a court-martial may direct.

20 ARTICLE 79. CONVICTION OF LESSER INCLUDED OFFENSE

21 An accused may be found guilty of an offense necessarily included in the of-
 22 fense charged or of an attempt to commit either the offense charged or an of-
 23 fense necessarily included therein.

24 ARTICLE 80. ATTEMPTS

25 (a) An act done with specific intent to commit an offense under this
 26 code amounting to more than mere preparation and tending, even though fail-
 27 ing, to effect its commission, is an attempt to commit that offense.

28 (b) Any person subject to this code who attempts to commit any offense
 29 punishable by this code shall be punished as a court-martial may direct, un-
 30 less otherwise specifically prescribed.

31 (c) Any person subject to this code may be convicted of an attempt to
 32 commit an offense although it appears on the trial that the offense was con-
 33 summated.

34 ARTICLE 81. CONSPIRACY

35 Any person subject to this code who conspires with any other person to commit
 36 an offense under this code shall, if one (1) or more of the conspirators does
 37 an act to effect the object of the conspiracy, be punished as a court-martial
 38 may direct.

1 ARTICLE 82. SOLICITATION

2 (a) Any person subject to this code who solicits or advises another or
3 others to desert in violation of article 85 of this code or mutiny in viola-
4 tion of article 94 of this code shall, if the offense solicited or advised
5 is attempted or committed, be punished with the punishment provided for the
6 commission of the offense; but, if the offense solicited or advised is not
7 committed or attempted, the person shall be punished as a court-martial may
8 direct.

9 (b) Any person subject to this code who solicits or advises another or
10 others to commit an act of misbehavior before the enemy in violation of ar-
11 ticle 99 of this code or sedition in violation of article 94 of this code
12 shall, if the offense solicited or advised is committed, be punished with
13 the punishment provided for the commission of the offense; but, if the of-
14 fense solicited or advised is not committed, the person shall be punished as
15 a court-martial may direct.

16 ARTICLE 83. FRAUDULENT ENLISTMENT -- APPOINTMENT -- SEPARATION

17 Any person who:

18 (1) Procures his own enlistment or appointment in the state military
19 forces by knowingly false representation or deliberate concealment as to his
20 qualifications for that enlistment or appointment and receives pay or al-
21 lowances thereunder; or

22 (2) Procures his own separation from the state military forces by know-
23 ingly false representation or deliberate concealment as to his eligibility
24 for that separation;
25 shall be punished as a court-martial may direct.

26 ARTICLE 84. UNLAWFUL ENLISTMENT -- APPOINTMENT -- SEPARATION

27 Any person subject to this code who effects an enlistment or appointment in
28 or a separation from the state military forces of any person who is known to
29 him to be ineligible for that enlistment, appointment, or separation because
30 it is prohibited by law, regulation, or order shall be punished as a court-
31 martial may direct.

32 ARTICLE 85. DESERTION

33 (a) Any member of the state military forces who:

34 (1) Without authority goes or remains absent from his unit, organi-
35 zation, or place of duty with intent to remain away there from perma-
36 nently;

37 (2) Quits his unit, organization, or place of duty with intent to avoid
38 hazardous duty or to shirk important service; or

39 (3) Without being regularly separated from one of the state military
40 forces enlists or accepts an appointment in the same or another one of
41 the state military forces, or in one of the armed forces of the United
42 States, without fully disclosing the fact that he has not been regularly

14 Any person subject to this code who, without authority:
15 (1) Fails to go to his appointed place of duty at the time prescribed;
16 (2) Goes from that place; or
17 (3) Absents himself or remains absent from his unit, organization, or
18 place of duty at which he is required to be at the time prescribed;
19 shall be punished as a court-martial may direct.

21 Any person subject to this code who through neglect or design misses the
22 movement of a ship, aircraft, or unit with which he is required in the course
23 of duty to move shall be punished as a court-martial may direct.

25 Any commissioned officer who uses contemptuous words against the president,
26 the vice president, congress, the secretary of defense, the secretary of a
27 military department, the secretary of homeland security, or the governor or
28 legislature of the state shall be punished as a court-martial may direct.

30 Any person subject to this code who behaves with disrespect toward his supe-
31 rior commissioned officer shall be punished as a court-martial may direct.

34 Any person subject to this code who:

35 (1) Strikes his superior commissioned officer or draws or lifts up any

36 weapon or offers any violence against him while he is in the execution of his

37 office; or

38 (2) Willfully disobeys a lawful command of his superior commissioned

39 officer;

1 shall be punished, if the offense is committed in time of war, by confinement
 2 of not more than ten (10) years or such other punishment as a court-martial
 3 may direct, and if the offense is committed at any other time, by such punish-
 4 ment as a court-martial may direct.

5 ARTICLE 91. INSUBORDINATE CONDUCT TOWARD WARRANT OF-
 6 FICER, NONCOMMISSIONED OFFICER OR PETTY OFFICER

7 Any warrant officer or enlisted member who:

8 (1) Strikes or assaults a warrant officer, noncommissioned officer, or
 9 petty officer, while that officer is in the execution of his office;

10 (2) Willfully disobeys the lawful order of a warrant officer, noncom-
 11 missioned officer, or petty officer; or

12 (3) Treats with contempt or is disrespectful in language or deportment
 13 toward a warrant officer, noncommissioned officer, or petty officer, while
 14 that officer is in the execution of his office;
 15 shall be punished as a court-martial may direct.

16 ARTICLE 92. FAILURE TO OBEY ORDER OR REGULATION

17 Any person subject to this code who:

18 (1) Violates or fails to obey any lawful general order or regulation;

19 (2) Having knowledge of any other lawful order issued by a member of the
 20 state military forces, which it is his duty to obey, fails to obey the order;
 21 or

22 (3) Is derelict in the performance of his duties;
 23 shall be punished as a court-martial may direct.

24 ARTICLE 93. CRUELTY AND MALTREATMENT

25 Any person subject to this code who is guilty of cruelty toward, or oppres-
 26 sion or maltreatment of, any person subject to his orders shall be punished
 27 as a court-martial may direct.

28 ARTICLE 94. MUTINY OR SEDITION

29 (a) Any person subject to this code who:

30 (1) With intent to usurp or override lawful military authority, re-
 31 fuses, in concert with any other person, to obey orders or otherwise do
 32 his duty or creates any violence or disturbance is guilty of mutiny;

33 (2) With intent to cause the overthrow or destruction of lawful civil
 34 authority, creates, in concert with any other person, revolt, violence,
 35 or other disturbance against that authority is guilty of sedition;

36 (3) Fails to do his utmost to prevent and suppress a mutiny or sedi-
 37 tion being committed in his presence, or fails to take all reasonable
 38 means to inform his superior commissioned officer or commanding officer
 39 of a mutiny or sedition which he knows or has reason to believe is taking
 40 place, is guilty of a failure to suppress or report a mutiny or sedition.

1 (b) A person who is found guilty of attempted mutiny, mutiny, sedition,
2 or failure to suppress or report a mutiny or sedition shall be punished as a
3 court-martial may direct.

4 ARTICLE 95. RESISTANCE -- FLIGHT -- BREACH OF ARREST -- ESCAPE

5 Any person subject to this code who:

- 6 (1) Resists apprehension;
7 (2) Flees from apprehension;
8 (3) Breaks arrest; or
9 (4) Escapes from custody or confinement;
10 shall be punished as a court-martial may direct.

11 ARTICLE 96. RELEASING PRISONER WITHOUT PROPER AUTHORITY

12 Any person subject to this code who, without proper authority, releases any
13 prisoner committed to his charge, or who through neglect or design suffers
14 any such prisoner to escape, shall be punished as a court-martial may direct,
15 whether or not the prisoner was committed in strict compliance with law.

16 ARTICLE 97. UNLAWFUL DETENTION

17 Any person subject to this code who, except as provided by law or regulation,
18 apprehends, arrests, or confines any person shall be punished as a court-
19 martial may direct.

20 ARTICLE 98. NONCOMPLIANCE WITH PROCEDURAL RULES

21 Any person subject to this code who:

- 22 (1) Is responsible for unnecessary delay in the disposition of any case
23 of a person accused of an offense under this code; or
24 (2) Knowingly and intentionally fails to enforce or comply with any
25 provision of this code regulating the proceedings before, during, or after
26 trial of an accused;
27 shall be punished as a court-martial may direct.

28 ARTICLE 99. MISBEHAVIOR BEFORE THE ENEMY

29 Any person subject to this code who before or in the presence of the enemy:

- 30 (1) Runs away;
31 (2) Shamefully abandons, surrenders, or delivers up any command, unit,
32 place, or military property which it is his duty to defend;
33 (3) Through disobedience, neglect, or intentional misconduct endan-
34 gers the safety of any such command, unit, place, or military property;
35 (4) Casts away his arms or ammunition;
36 (5) Is guilty of cowardly conduct;
37 (6) Quits his place of duty to plunder or pillage;
38 (7) Causes false alarms in any command, unit, or place under control of
39 the armed forces of the United States or the state military forces;

1 (8) Willfully fails to do his utmost to encounter, engage, capture, or
 2 destroy any enemy troops, combatants, vessels, aircraft, or any other thing,
 3 which it is his duty so to encounter, engage, capture, or destroy; or

4 (9) Does not afford all practicable relief and assistance to any
 5 troops, combatants, vessels, or aircraft of the armed forces belonging to
 6 the United States or its allies, to the state, or to any other state, when
 7 engaged in battle;
 8 shall be punished as a court-martial may direct.

9 ARTICLE 100. SUBORDINATE COMPELLING SURRENDER

10 Any person subject to this code who compels or attempts to compel the comman-
 11 der of any of the state military forces of the state, or of any other state,
 12 place, vessel, aircraft, or other military property, or of any body of mem-
 13 bers of the armed forces, to give it up to an enemy or to abandon it, or who
 14 strikes the colors or flag to an enemy without proper authority, shall be
 15 punished as a court-martial may direct.

16 ARTICLE 101. IMPROPER USE OF COUNTERSIGN

17 Any person subject to this code who in time of war discloses the parole or
 18 countersign to any person not entitled to receive it or who gives to another,
 19 who is entitled to receive and use the parole or countersign, a different pa-
 20 role or countersign from that which, to his knowledge, he was authorized and
 21 required to give, shall be punished as a court-martial may direct.

22 ARTICLE 102. FORCING A SAFEGUARD

23 Any person subject to this code who forces a safeguard shall be punished as a
 24 court-martial may direct.

25 ARTICLE 103. CAPTURED OR ABANDONED PROPERTY

26 (a) All persons subject to this code shall secure all public property
 27 taken for the service of the United States or the state and shall give notice
 28 and turn over to the proper authority without delay all captured or abandoned
 29 property in their possession, custody, or control.

30 (b) Any person subject to this code who:

31 (1) Fails to carry out the duties prescribed in subsection (a) of this
 32 article;

33 (2) Buys, sells, trades, or in any way deals in or disposes of taken,
 34 captured, or abandoned property, whereby he receives or expects any
 35 profit, benefit, or advantage to himself or another directly or indi-
 36 rectly connected with himself; or

37 (3) Engages in looting or pillaging;
 38 shall be punished as a court-martial may direct.

39 ARTICLE 104. AIDING THE ENEMY

40 Any person subject to this code who:

1 (1) Aids, or attempts to aid, the enemy with arms, ammunition, sup-
 2 plies, money, or other things; or
 3 (2) Without proper authority, knowingly harbors or protects or gives
 4 intelligence to, or communicates or corresponds with or holds any in-
 5 tercourse with the enemy, either directly or indirectly;
 6 shall be punished as a court-martial may direct.

7 ARTICLE 105. MISCONDUCT AS PRISONER

8 Any person subject to this code who, while in the hands of the enemy in time of
 9 war:

10 (1) For the purpose of securing favorable treatment by his captors acts
 11 without proper authority in a manner contrary to law, custom, or regula-
 12 tion, to the detriment of others of whatever nationality held by the enemy as
 13 civilian or military prisoners; or

14 (2) While in a position of authority over such persons maltreats them
 15 without justifiable cause;
 16 shall be punished as a court-martial may direct.

17 ARTICLE 106. RESERVED

18 ARTICLE 106a. RESERVED

19 ARTICLE 107. FALSE OFFICIAL STATEMENTS

20 Any person subject to this code who, with intent to deceive, signs any false
 21 record, return, regulation, order, or other official document made in the
 22 line of duty, knowing it to be false, or makes any other false official state-
 23 ment made in the line of duty, knowing it to be false, shall be punished as a
 24 court-martial may direct.

25 ARTICLE 108. MILITARY PROPERTY -- LOSS, DAM-
 26 AGE, DESTRUCTION OR WRONGFUL DISPOSITION

27 Any person subject to this code who, without proper authority:

28 (1) Sells or otherwise disposes of;
 29 (2) Willfully or through neglect damages, destroys, or loses; or
 30 (3) Willfully or through neglect suffers to be lost, damaged, de-
 31 stroyed, sold, or wrongfully disposed of;
 32 any military property of the United States or of any state shall be punished
 33 as a court-martial may direct.

34 ARTICLE 109. PROPERTY OTHER THAN MILITARY
 35 PROPERTY -- WASTE, SPOILAGE OR DESTRUCTION

36 Any person subject to this code who willfully or recklessly wastes, spoils,
 37 or otherwise willfully and wrongfully destroys or damages any property other
 38 than military property of the United States or of any state shall be punished
 39 as a court-martial may direct.

1 ARTICLE 110. IMPROPER HAZARDING OF VESSEL

2 (a) Any person subject to this code who willfully and wrongfully haz-
3 ards or suffers to be hazarded any vessel of the armed forces of the United
4 States or any state military forces shall suffer such punishment as a court-
5 martial may direct.

6 (b) Any person subject to this code who negligently hazards or suffers
7 to be hazarded any vessel of the armed forces of the United States or any
8 state military forces shall be punished as a court-martial may direct.

9 ARTICLE 111. RESERVED

10 ARTICLE 112. DRUNK ON DUTY

11 Any person subject to this code other than a sentinel or lookout who is found
12 drunk on duty shall be punished as a court-martial may direct.

13 ARTICLE 112a. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES

14 (a) Any person subject to this code who wrongfully uses, possesses,
15 manufactures, distributes, imports into the customs territory of the United
16 States, exports from the United States, or introduces into an installation,
17 vessel, vehicle, or aircraft used by or under the control of the armed forces
18 of the United States or of any state military forces a substance described
19 in subsection (b) of this article shall be punished as a court-martial may
20 direct.

21 (b) The substances referred to in subsection (a) of this article are the
22 following:

23 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,
24 methamphetamine, phencyclidine, barbituric acid, and marijuana and any
25 compound or derivative of any such substance.

26 (2) Any substance not specified in paragraph (1) of this subsection
27 that is listed on a schedule of controlled substances prescribed by the
28 president for the purposes of the uniform code of military justice of
29 the armed forces of the United States, 10 U.S.C. section 801 et seq.

30 (3) Any other substance not specified in paragraph (1) of this subsec-
31 tion or contained on a list prescribed by the president under paragraph
32 (2) of this subsection that is listed in schedules I through V of article
33 202 of the controlled substances act, 21 U.S.C. section 812.

34 ARTICLE 113. MISBEHAVIOR OF SENTINEL

35 Any sentinel or lookout who is found drunk or sleeping upon his post or leaves
36 it before being regularly relieved shall be punished, if the offense is com-
37 mitted in time of war, by confinement of not more than ten (10) years or other
38 punishment as a court-martial may direct, but if the offense is committed at
39 any other time, by such punishment as a court-martial may direct.

40 ARTICLE 114. DUELING

1 Any person subject to this code who fights or promotes, or is concerned in or
2 connives at fighting a duel, or who, having knowledge of a challenge sent or
3 about to be sent, fails to report the fact promptly to the proper authority,
4 shall be punished as a court-martial may direct.

5 ARTICLE 115. MALINGERING

6 Any person subject to this code who for the purpose of avoiding work, duty, or
7 service:

8 (1) Feigns illness, physical disablement, mental lapse, or derange-
9 ment; or

10 (2) Intentionally inflicts self-injury;
11 shall be punished as a court-martial may direct.

12 ARTICLE 116. RIOT OR BREACH OF PEACE

13 Any person subject to this code who causes or participates in any riot or
14 breach of the peace shall be punished as a court-martial may direct.

15 ARTICLE 117. PROVOKING SPEECHES OR GESTURES

16 Any person subject to this code who uses provoking or reproachful words or
17 gestures towards any other person subject to this code shall be punished as a
18 court-martial may direct.

19 ARTICLE 118. RESERVED

20 ARTICLE 119. RESERVED

21 ARTICLE 120. RESERVED

22 ARTICLE 121. RESERVED

23 ARTICLE 122. RESERVED

24 ARTICLE 123. RESERVED

25 ARTICLE 123a. RESERVED

26 ARTICLE 124. RESERVED

27 ARTICLE 125. RESERVED

28 ARTICLE 126. RESERVED

29 ARTICLE 127. RESERVED

30 ARTICLE 128. RESERVED

1 ARTICLE 129. RESERVED

2 ARTICLE 130. RESERVED

3 ARTICLE 131. RESERVED

4 ARTICLE 132. FRAUDS AGAINST THE GOVERNMENT

5 Any person subject to this code who:

6 (1) Knowing it to be false or fraudulent:

7 (A) Makes any claim against the United States, the state, or any officer
8 thereof; or

9 (B) Presents to any person in the civil or military service thereof, for
10 approval or payment, any claim against the United States, the state, or
11 any officer thereof;

12 (2) For the purpose of obtaining the approval, allowance, or payment of
13 any claim against the United States, the state, or any officer thereof:

14 (A) Makes or uses any writing or other paper knowing it to contain any
15 false or fraudulent statements;

16 (B) Makes any oath, affirmation or certification to any fact or to any
17 writing or other paper knowing the oath, affirmation or certification
18 to be false; or

19 (C) Forges or counterfeits any signature upon any writing or other
20 paper, or uses any such signature knowing it to be forged or counter-
21 feited;

22 (3) Having charge, possession, custody, or control of any money or
23 other property of the United States or the state, furnished or intended for
24 the armed forces of the United States or the state military forces, knowingly
25 delivers to any person having authority to receive it, any amount thereof
26 less than that for which he receives a certificate or receipt; or

27 (4) Being authorized to make or deliver any paper certifying the
28 receipt of any property of the United States or the state, furnished or
29 intended for the armed forces of the United States or the state military
30 forces, makes or delivers to any person such writing without having full
31 knowledge of the truth of the statements therein contained and with intent to
32 defraud the United States or the state;

33 shall, upon conviction, be punished as a court-martial may direct.

34 ARTICLE 133. CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN

35 Any commissioned officer, cadet, candidate, or midshipman who is convicted
36 of conduct unbecoming an officer and a gentleman shall be punished as a
37 court-martial may direct.

38 ARTICLE 134. GENERAL ARTICLE

39 Though not specifically mentioned in this code, all disorders and neglects
40 to the prejudice of good order and discipline in the state military forces
41 and all conduct of a nature to bring discredit upon the state military forces
42 shall be taken cognizance of by a court-martial and punished at the discre-

tion of a military court. Offenses which may be punished under this section include, but are not limited to, those offenses set out in the manual for courts-martial as punishable under this article of the uniform code of military justice. However, where a crime constitutes an offense that violates both this code and the criminal laws of the state where the offense occurs or criminal laws of the United States, jurisdiction of the military court must be determined in accordance with article 2 (b) of this code.

PART XI. MISCELLANEOUS PROVISIONS

ARTICLE 135. COURTS OF INQUIRY

(a) Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three (3) or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

ARTICLE 136. AUTHORITY TO ADMINISTER OATHS AND TO ACT AS NOTARY

(a) The following persons may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the naval militia.

(5) All other persons designated by regulations of the armed forces of the United States or by statute.

(b) The following persons may administer oaths necessary in the performance of their duties:

(1) The president, military judge, and trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces of the United States or by statute.

(c) The signature without seal of any such person, together with the title of his office, is prima facie evidence of the person's authority.

ARTICLE 137. ARTICLES TO BE EXPLAINED

(a) The articles of this code specified in subsection (c) of this article shall be carefully explained to each enlisted member at the time of, or within thirty (30) days after, the member's initial entrance into a duty status with the state military forces.

(b) Such articles shall be explained again:

(1) After the member has completed basic or recruit training; and

(2) At the time when the member reenlists.

(c) This subsection applies with respect to articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code.

(d) The text of the code and of the regulations prescribed under such code shall be made available to a member of the state military forces, upon request by the member, for the member's personal examination.

ARTICLE 138. COMPLAINTS OF WRONGS

Any member of the state military forces who believes himself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of, and shall, as soon as possible, send to the adjutant general a true statement of that complaint, with the proceedings had thereon.

ARTICLE 139. REDRESS OF INJURIES TO PROPERTY

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that officer may, under such regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one (1) to three (3) commissioned officers and, for the purpose of that investigation, it has power

1 to summon witnesses and examine them upon oath, to receive depositions or
 2 other documentary evidence, and to assess the damages sustained against the
 3 responsible parties. The assessment of damages made by the board is subject
 4 to the approval of the commanding officer, and in the amount approved by that
 5 officer shall be charged against the pay of the offenders. The order of the
 6 commanding officer directing charges herein authorized is conclusive on any
 7 disbursing officer for payment to the injured parties of the damages so as-
 8 sessed and approved.

9 (b) If the offenders cannot be ascertained, but the organization or
 10 detachment to which they belong is known, charges totaling the amount of
 11 damages assessed and approved may be made in such proportion as may be con-
 12 sidered just upon the individual members thereof who are shown to have been
 13 present at the scene at the time the damages complained of were inflicted, as
 14 determined by the approved findings of the board.

15 ARTICLE 140. DELEGATION BY THE GOVERNOR

16 The governor may delegate any authority vested in the governor under this
 17 code and provide for the sub-delegation of any such authority, except the
 18 power given the governor by article 22 of this code.

19 ARTICLE 141. PAYMENT OF FEES, COSTS AND EXPENSES

20 The fees and authorized travel expenses of all witnesses, experts, victims,
 21 court reporters, and interpreters, fees for the service of process, the
 22 costs of collection, apprehension, detention and confinement, and all other
 23 necessary expenses of prosecution and the administration of military jus-
 24 tice, to include courts-martial and nonjudicial punishment, not otherwise
 25 payable by any other source, shall be paid out of the military division sup-
 26 port fund as established in section 46-806, Idaho Code.

27 ARTICLE 142. PAYMENT OF FINES AND DISPOSITION THEREOF

28 (a) Fines imposed by a military court or through imposition of nonjudi-
 29 cial punishment may be paid to the state and delivered to the court or impos-
 30 ing officer or to a person executing their process. Fines may be collected in
 31 the following manner:

32 (1) By cash or money order;

33 (2) By retention of any pay or allowances due or to become due the person
 34 fined from any state or the United States;

35 (3) By garnishment or levy, together with costs, on the wages, goods,
 36 and chattels of a person delinquent in paying a fine, as provided by law.

37 (b) Any sum so received or retained shall be deposited in the military
 38 division support fund as established in section 46-806, Idaho Code, or to
 39 whomever the court so directs.

40 ARTICLE 143. UNIFORMITY OF INTERPRETATION

1 This code shall be so construed as to effectuate its general purpose to make
 2 it uniform, so far as practical, with the uniform code of military justice,
 3 10 U.S.C. chapter 47.

4 ARTICLE 144. IMMUNITY FOR ACTION OF MILITARY COURTS

5 All persons acting under the provisions of this code, whether as a member of
 6 the military or as a civilian, shall be immune from any personal liability
 7 for any of the acts or omissions which they did or failed to do as part of
 8 their duties under this code.

9 ARTICLE 145. SEVERABILITY

10 The provisions of this code are hereby declared to be severable and if any
 11 provision of this code or the application of such provision to any person or
 12 circumstance is declared invalid for any reason, such declaration shall not
 13 affect the validity of the remaining portions of this code.

14 ARTICLE 146. SHORT TITLE

15 This act may be cited as the "Uniform State Code of Military Justice"
 16 (USCMJ).

17 ARTICLE 147. TIME OF TAKING EFFECT

18 This act takes effect July 1, 2015.

19 ARTICLE 148. TIME OF TAKING EFFECT

20 Upon enactment and the effective date, this law supersedes all existing
 21 statutes, ordinances, directives, rules, regulations, orders and other
 22 laws in the state covered by the subject matter of this law, and all such
 23 statutes, ordinances, directives, rules, regulations, orders and other laws
 24 are hereby repealed.

25 46-1103. ARREST. Arrest of members of the Idaho military not in fed-
 26 eral service by members of the Idaho military while acting in their military
 27 capacity is prohibited, except in the following circumstances:

28 (1) If any member fails or refuses to report to his appointed place of
 29 duty, his commanding officer in the rank of major or above is authorized to
 30 arrest or cause to be arrested such member and have him brought before the
 31 commanding officer at his unit or organization headquarters, whether such
 32 headquarters be located within or without the borders of the state. After
 33 such an arrest, the commanding officer is authorized to transport, or cause
 34 to be transported, such member to his appointed place of duty, whether within
 35 or without the borders of the state. Furthermore, if a commander, in the rank
 36 of major or above, finds that probable cause exists to believe that a minor
 37 offense has been committed by a member of his command, he may cause the member
 38 to be arrested and brought before him for the purpose of processing nonjudi-
 39 cial punishment under article 15 of the model state code of military justice

1 as provided in section 46-1102, Idaho Code. If military personnel are not
2 available for the purpose of making the arrest or if the officer ordering the
3 arrest deems it advisable, he may issue a warrant to any sheriff or peace of-
4 ficer authorized to serve warrants of arrest, and such sheriff or peace of-
5 ficer shall serve such warrants of arrest immediately, whenever practica-
6 ble, and make return thereof to the commanding officer issuing the warrant.
7 Upon receipt of the notification of arrest, the commanding officer shall di-
8 rect that the arrestee be retrieved and brought before him within a reason-
9 able time. Warrants issued under this subsection shall be the equivalent of
10 a misdemeanor warrant issued by a court of the state of Idaho.

11 (2) If any member of the Idaho military has had charges preferred
12 against him under this chapter, and the convening authority to whom the
13 charges have been forwarded has found that probable cause exists that the of-
14 fense was committed by the accused and that the incarceration of the accused
15 pending court-martial is required because of special circumstances found
16 to exist which warrant such incarceration, then the convening authority is
17 authorized to arrest such member or cause him to be arrested and have him
18 confined pending trial. If military personnel are not available for the pur-
19 pose of making the arrest, or if the convening authority deems it advisable,
20 he may issue a warrant to any sheriff or peace officer authorized to serve
21 such warrant in the same manner as other warrants of arrest, and said sheriff
22 or peace officer shall effect the arrest and hold the accused in the county
23 jail of the county in which the arrest is effected. Upon receipt of the no-
24 tification of arrest, in accordance with the provisions of section 46-1102,
25 Idaho Code, the commanding officer may direct that the arrestee be retrieved
26 and brought before him within a reasonable time. Warrants issued under this
27 subsection shall be the equivalent of a felony warrant issued by a court of
28 the state of Idaho.

29 46-1104. REGULATORY AUTHORITY. The adjutant general shall have au-
30 thority to promulgate such regulations as he deems necessary and proper to
31 carry out the intent of this code.

32 46-1105. IMMUNITY. All persons acting under the provisions of this
33 chapter, whether as a member of the military or as a civilian, shall be immune
34 from any personal liability for any of their acts or omissions which they did
35 or failed to do as part of their duties under this chapter.

36 46-1106. SEVERABILITY. The provisions of this act are hereby declared
37 to be severable and if any provision of this act or the application of such
38 provision to any person or circumstance is declared invalid for any reason,
39 such declaration shall not affect the validity of the remaining portions of
40 this act.